

By: Miles

H.B. No. 2410

A BILL TO BE ENTITLED

AN ACT

relating to mortgage loans.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 51.002(d) and (e), Property Code, are amended to read as follows:

(d) Notwithstanding any agreement to the contrary, the mortgage servicer of the debt shall serve a debtor in default under a security instrument imposing a ~~[deed of trust or other]~~ contract lien on real property and each other person having a recorded interest in the real property ~~[used as the debtor's residence]~~ with written notice by certified mail stating that the debtor is in default under the security instrument imposing the ~~[deed of trust or other]~~ contract lien, providing a full written disclosure of the terms of the security instrument, and giving the debtor and any other person entitled to the notice at least 30 ~~[20]~~ days to cure the default before notice of sale can be given under Subsection (b). The entire calendar day on which the notice required by this subsection is given, regardless of the time of day at which the notice is given, is included in computing the ~~[20-day]~~ notice period required by this subsection, and the entire calendar day on which notice of sale is given under Subsection (b) is excluded in computing the ~~[20-day]~~ notice period.

(e) Service of a notice under this section by certified mail is complete when the notice is deposited in the United States mail,

1 postage prepaid and addressed to the person entitled to notice
2 [~~debtor~~] at the person's [~~debtor's~~] last known address. The
3 affidavit of a person knowledgeable of the facts to the effect that
4 service was completed is prima facie evidence of service.

5 SECTION 2. Section 51.0021, Property Code, is amended to
6 read as follows:

7 Sec. 51.0021. NOTICE OF CHANGE OF ADDRESS [~~REQUIRED~~]. A
8 debtor shall, and any other person entitled to notice from a
9 mortgagee or mortgage servicer under this chapter may, inform the
10 mortgage servicer of the debt in a reasonable manner of any change
11 of the person's address [~~of the debtor~~] for purposes of providing
12 notice to the person [~~debtor~~] under Section 51.002 or another
13 provision of this chapter.

14 SECTION 3. Chapter 51, Property Code, is amended by adding
15 Sections 51.0022 and 51.0023 to read as follows:

16 Sec. 51.0022. DISCLOSURE OF TERMS OF SECURITY INSTRUMENT.
17 Not later than the 90th day after the date on which a mortgagee or
18 the mortgagee's mortgage servicer receives a written request from a
19 person having a recorded interest in real property that is subject
20 to a contract lien in which the mortgagee has an interest, the
21 mortgagee or mortgage servicer shall provide the person a full
22 written disclosure of the terms of the security instrument.

23 Sec. 51.0023. JUDICIAL FORECLOSURE: NOTICE OF DEFAULT AND
24 RIGHT TO CURE. (a) Before a mortgagee or mortgage servicer
25 commences a judicial foreclosure proceeding, the mortgagee or
26 mortgage servicer must serve each person having a recorded interest
27 in the real property that is subject to the deed of trust or other

1 contract lien being foreclosed, regardless of whether the person is
2 liable on the debt secured by the contract lien, with written notice
3 by certified mail stating that the debtor is in default under the
4 security instrument imposing the contract lien, providing a full
5 written disclosure of the terms of the security instrument, and
6 giving the person at least 30 days to cure the default before a
7 foreclosure proceeding can be commenced.

8 (b) The entire calendar day on which the notice required by
9 this section is given, regardless of the time of day at which the
10 notice is given, is included in computing the notice period
11 required by this section, and the entire calendar day on which the
12 judicial foreclosure proceeding is commenced is excluded in
13 computing the notice period.

14 (c) Service of a notice under this section by certified mail
15 is complete when the notice is deposited in the United States mail,
16 postage prepaid and addressed to the person entitled to notice at
17 the person's last known address. The affidavit of a person
18 knowledgeable of the facts to the effect that service was completed
19 is prima facie evidence of service.

20 SECTION 4. Subtitle B, Title 4, Finance Code, is amended by
21 adding Chapter 343A to read as follows:

22 CHAPTER 343A. REPAYMENT OF REVERSE MORTGAGE LOAN

23 Sec. 343A.001. DEFINITIONS. In this chapter:

24 (1) "Personal representative" has the meaning
25 assigned by Section 3, Texas Probate Code.

26 (2) "Reverse mortgage" means an extension of credit
27 that meets the requirements of Sections 50(k)-(p), Article XVI,

1 Texas Constitution.

2 Sec. 343A.002. PROCEDURES FOR REPAYMENT FOLLOWING DEATH OF
3 BORROWERS. A lender who makes a reverse mortgage shall allow for
4 the repayment of the advances made under the extension of credit
5 after the death of all borrowers who entered into the loan as
6 provided by this chapter.

7 Sec. 343A.003. REQUEST BY HEIR OR REPRESENTATIVE OF
8 BORROWER'S ESTATE. (a) Following the death of all borrowers who
9 entered into a reverse mortgage with a lender, a person who is an
10 heir of the estate of the last surviving borrower may:

11 (1) establish with the lender that the person is an
12 heir by:

13 (A) showing that the person is named in the
14 borrower's will as an heir entitled to all or part of the real
15 property securing the reverse mortgage; or

16 (B) showing evidence of filing an affidavit of
17 the borrower's death with the recorder of deeds that establishes
18 the person's identity as an heir entitled to the real property; and

19 (2) request a disclosure of the terms of the reverse
20 mortgage and a statement of the amount of advances made under the
21 extension of credit and the amount owed on the obligation.

22 (b) A personal representative of the last surviving
23 borrower's estate may make a request under this section on behalf of
24 an heir of the borrower if the representative establishes with the
25 lender that the representative:

26 (1) is named in the will of the borrower to serve as
27 personal representative of the estate; or

1 (2) has been appointed by a probate court to serve as
2 personal representative of the estate.

3 Sec. 343A.004. DISCLOSURE. (a) A lender who receives a
4 request under Section 343A.003 shall provide to the heir or
5 representative making the request:

6 (1) a full written disclosure of the terms of the
7 reverse mortgage and a statement that contains the information
8 described by Section 343A.003(a)(2); and

9 (2) a written offer to the heirs for the repayment of
10 the mortgage that:

11 (A) allows the heir a repayment period of at
12 least 15 years;

13 (B) provides for interest to be charged at a rate
14 not to exceed the average rate of interest charged on reverse
15 mortgage loans on the date of the borrower's death; and

16 (C) provides for a period of at least 90 days
17 after the date the information is sent for the offer to be accepted.

18 (b) The information required under Subsection (a) must be
19 mailed to the heir or the personal representative, by certified
20 mail, return receipt requested, not later than the earlier of:

21 (1) the 90th day after the date the lender receives the
22 request; or

23 (2) the 90th day before the date the lender commences
24 any foreclosure proceedings.

25 SECTION 5. (a) Sections 51.002(d) and (e), Property Code,
26 as amended by this Act, apply to a foreclosure for which a notice of
27 sale under Section 51.002(b), Property Code, is given on or after

1 the effective date of this Act, unless the notice of default was
2 given under Section 51.002(d), Property Code, before the effective
3 date of this Act. A foreclosure for which the notice of default was
4 given before the effective date of this Act is governed by the law
5 in effect immediately before the effective date of this Act, and
6 that law is continued in effect for that purpose.

7 (b) Chapter 343A, Finance Code, as added by this Act,
8 applies to a reverse mortgage entered into by an individual whose
9 death occurs on or after the effective date of this Act without
10 regard to whether the mortgage was entered into before, on, or after
11 the effective date of this Act.

12 SECTION 6. This Act takes effect September 1, 2011.